

REMARKS

Applicants reserve the right to prosecute non-elected subject matter in subsequent divisional applications.

Rejoinder of Method Claims

Claims 32-34 are “method of use” claims of the product of claim 31 that cover the same scope of product as the product of claim 31 now under consideration. Therefore, it is submitted that upon allowance of any of the product claims, claims 32-34 should be rejoined and considered, in accordance with the Commissioner’s Notice in the Official Gazette of March 26, 1996, entitled “Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b).” Quoting the Commissioner:

....in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim.

Applicants respectfully bring to the Examiner’s attention that claims 32-34 depend from product claim 31 and claims which depend therefrom. Therefore, rejoinder of claims 32-34 upon allowance of product claim 31 is proper and is respectfully requested.

The Examiner continues to incorrectly describe the scope of method claims 32-34. The scope of these method claims is found in the preamble of the claim. Since both the targets detected by these methods is **the polynucleotide of allowable claim 31**, it has to be of the same scope! It is totally irrelevant for the purposes of rejoinder to look at the steps in these methods to detect this target polynucleotide. Claims 32-34 are patentable in that they are detecting a novel and patentable polynucleotide sequence. Accordingly, how this method is carried out is irrelevant. Therefore, reconsideration and rejoinder of claims 32-34 are respectfully requested.

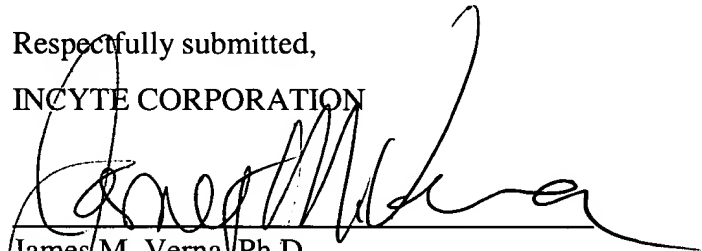
CONCLUSION

In light of the above amendments and remarks, Applicants submit that the present application is fully in condition for allowance, and request that the Examiner withdraw the outstanding objections/rejections. Early notice to that effect is earnestly solicited.

If the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, Applicants invite the Examiner to contact the undersigned at the number listed below.

Applicants believe that no fee is due with this communication. However, if the USPTO determines that a fee is due, the Commissioner is hereby authorized to charge Deposit Account No. **09-0108**.

Respectfully submitted,
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